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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk

No. 119.

ISAAC N. E. ALLEN AND ALEXANDER S. BACON,

Plaintiffs in Error,

vs.

THE ALLEGHANY COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

BRIEF OF DEFENDANT IN ERROR.

JAMES A. GORDON,
Of Counsel.

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The defendant in errror contends:

First—This Court has no jurisdiction. Full faith and credit were given by the New Jersey Court to the statutes of the States of New York and Pennsylvania. The case turned upon the construction of these statutes. Their validity was not called in question.

See opinion of New Jersey Court of Errors and Appeals, page 21, of Stipulation and Addition to Record.

Johnson v. New York Life Insurance Co., 187 U. S., 491.

Bauholzer v. New York Life Insurance Co., 178 U. S., 402.

Lloyd v. Matthews, 155 U. S., 222.

Glen v. Garth, 147 U. S., 360.

Second—Under the New York statute, a contract made in New York by a foreign corporation, not complying with the provisions of the act, cannot be enforced in the State of New York, but the statute does not make the contract void, or prevent its enforcement in any other Court.

The New Jersey Court fully considered this statute and construed it after referring to the decisions of the New York Court of Appeals and other decisions which seemed in point, and which are cited in the opinion of the New Jersey Court of Errors, page 24 of "Stipulation and addition to record."

In addition to the cases cited in the opinion, see the case of Fritz v. Palmer, 132 U. S., 282. Whether the State Court construed the statute correctly is not subject to review in this Court.

Third—The third plea, which sets up the Pennsylvania statute, fails to allege that the note upon which this suit is founded had any connection with business unlawfully transacted in Pennsylvania, within the meaning of the statute, and for this reason the New Jersey Court sustained the demurrer to this plea.

The Court of Errors and Appeals of New Jersey gave the Pennsylvania statute the same construction given to it by the Pennsylvania Courts, but decided that the plea did not contain sufficient allegations of fact to bring the note in suit, within the prohibition of the statute.

The decision of the New Jersey Court was correct, but on this question of pleading, the decision of the State Court is not reviewable in this Court.

(See opinion of New Jersey Court of Errors and Appeals, page 25 of "Stipulation and addition to record.")

Fourth—The statutes pleaded have no extra territorial effect, except upon principles of comity; and the plaintiffs in error, on the argument before the New Jersey Supreme Court, having disclaimed that the principles of comity were involved in the case, cannot now rely upon them.

(See opinion of New Jersey Supreme Court, page 15, of "Stipulation and addition to record.")

JAMES A. GORDON,

of Counsel with Defendant in Error.